

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Time Warner Cable's Petition For)	WC Docket No. 06-55
Declaratory Ruling That Competitive)	
Local Exchange Carriers May)	
Obtain Interconnection To Provide)	
Wholesale Telecommunications Services)	
To VoIP Providers)	

COMMENTS OF THE
SOUTH CAROLINA TELEPHONE COALITION

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SUMMARY

In its Petition filed in this docket, Time Warner Cable ("Time Warner") seeks a declaratory ruling that competitive local exchange carriers ("CLECs") are entitled to interconnect with incumbent local exchange carriers ("ILECs") for the purpose of transmitting traffic to or from another (third party) service provider, such as a Voice over Internet Protocol ("VoIP")-based service provider. Time Warner alleges that the decisions of certain state commissions, which limit the exchange of traffic between carriers to that generated by their own end-user customers, have effectively foreclosed Time Warner's ability to introduce competitive VoIP service in many areas.

While Time Warner purports to be seeking a declaration of its rights and the obligations of other carriers with respect thereto, Time Warner actually is seeking to have the Commission establish new policy and change existing law. Time Warner is not seeking a declaration as to what the law is, but as to what Time Warner would like for it to be.

A Petition for Declaratory Ruling is not an appropriate vehicle by which to create new law or policy, particularly if the new law is at odds with existing law. A Petition for Declaratory Ruling is appropriate if necessary to terminate a controversy or remove uncertainty. In this case, there is no such uncertainty or controversy upon which the Commission can rule. The state commissions at issue correctly applied the law and applicable Commission rules and orders, and appropriately limited the exchange of traffic under Section 251(b) of the Act to traffic originated on the respective networks of the parties to the agreement.

Time Warner has not been foreclosed from providing competitive services in South Carolina, as it suggests. Time Warner currently provides its Digital Phone VoIP service in many

areas of South Carolina, and calls between SCTC company customers and Time Warner customers are currently being completed. In addition, Time Warner is free to pursue direct arrangements to exchange traffic with the rural ILECs, if the rural ILECs are in fact obligated to enter into such arrangements.

Furthermore, to the extent Time Warner complains of being limited with respect to the manner in which it may provide competitive services in rural areas of South Carolina or other states, it is within the respective state commissions' purview to make such public interest determinations. Granting Time Warner's petition would circumvent federal and state law provisions that provide for important public interest determinations to be made by the states prior to permitting competitive local service in rural areas.

Finally, even if Time Warner's Petition were appropriate and ripe for determination, it should be denied as a matter of policy. By seeking a declaratory ruling in this docket, Time Warner is seeking to bypass the normal deliberative process associated with a number of complex and inter-related issues, and to make an "end run" around important federal and state proceedings and powers. If Time Warner's request for declaratory ruling is granted, it would have the effect of pre-determining the nature of Time Warner's Digital Phone VoIP service, at least to the extent of determining other parties' obligations regarding how to treat such traffic. This issue is only one of several inter-related issues currently before the Commission in its *IP-Enabled Services Proceeding*, and the issue should not be determined piece-meal.

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The South Carolina Telephone Coalition ("SCTC"), an organization of rural telephone companies operating in the State of South Carolina, on behalf of its members as listed in Exhibit A, hereby respectfully submits these comments, by and through its undersigned counsel. These comments are being submitted in response to the public notice issued by the Federal Communications Commission (the "Commission") in the above-captioned proceeding.¹

¹ *Pleading Cycle Established For Comments on Time Warner Cable's Petition For Declaratory Ruling That Competitive Local Exchange Carriers May Obtain Interconnection To Provide Wholesale Telecommunications Services To VoIP Providers*, WC Docket No. 06-55, Public Notice, DA 06-534 (rel. Mar. 6, 2006). The Wireline Competition Bureau subsequently granted an extension of time to file comments. See DA No. 06-639 (rel. Mar. 21, 2006).

INTRODUCTION

Time Warner Cable (“Time Warner”) seeks a declaratory ruling that competitive local exchange carriers (“CLECs”) are entitled to interconnect with incumbent local exchange carriers (“ILECs”) for the purpose of transmitting traffic to or from another (third party) service provider, such as a Voice over Internet Protocol (“VoIP”)-based service provider.² Time Warner alleges certain state commissions, specifically the Public Service Commission of South Carolina (“SCPSC”) and the Nebraska Public Service Commission (“NPSC”), in finding that telecommunications carriers may only exchange traffic generated by their own retail end-user customers, have effectively foreclosed Time Warner’s ability to introduce competitive VoIP service in many areas.³ The SCTC’s comments will focus primarily on the South Carolina circumstances and orders that gave rise, in part, to Time Warner’s Petition in this matter.⁴

On March 17, 2005, MCImetro Access Transmission Services, LLC (“MCI”) filed a Petition for Arbitration with the South Carolina Public Service Commission (“SCPSC”), asking the Commission to arbitrate a number of issues that were unresolved following negotiations between MCI and four (4) rural ILECs – Farmers Telephone Cooperative, Inc., Hargray Telephone Company, Home Telephone Company, Inc., and PBT Telecom, Inc. (collectively, the

² Petition at pp. 1-2, 12.

³ Petition at p. 2.

⁴ We believe it will be helpful for the Commission to develop a complete record in this matter, including a detailed discussion of the state-specific factual and procedural background regarding the issues raised. We have attempted to provide a detailed discussion of the proceedings in South Carolina. While the issues raised may be similar in other states, we will leave it to those who are more familiar with the particular facts of proceedings in those states to set forth with particularity the factual and procedural background of the issues raised.

“RLECs”).⁵ In its Petition for Arbitration, MCI acknowledged that it was not seeking services under Section 251(c) but only under Sections 251(a) and (b).⁶ Time Warner Cable Information Services (South Carolina), LLC (“TWCIS”) petitioned to intervene in the arbitration. The SCPSC denied the petition on the ground that the matter involved the negotiation and arbitration of a contract to which TWCIS was not a party.⁷ TWCIS appealed the SCPSC’s decision not to allow its intervention, and the matter is pending in South Carolina Circuit Court.⁸ The SCPSC conducted an arbitration proceeding to consider the issues raised by MCI, and issued its Order Ruling on Arbitration dated October 7, 2005.⁹

In the meantime, on June 20, 2005, MCI filed a Petition for Arbitration with Horry Telephone Cooperative, Inc., setting forth several issues that were identical to issues raised in the earlier arbitration with the RLECs. As with the RLEC Arbitration, MCI requested services only under Sections 251(a) and (b) and not under Section 251(c).¹⁰ Again, TWCIS’s petitioned to

⁵ Each of the RLECs is a member of the SCTC. Each is a rural telephone company, as defined in 47 U.S.C. § 153(37). Farmers Telephone Cooperative, Inc., Home Telephone Company, Inc., and PBT Telecom, Inc. retain their rural exemptions under Section 251(f)(1). Hargray Telephone Company, Inc.’s rural exemption was terminated by the SCPSC by SCPSC Order No. 2000-021 in Docket No. 1999-217-C. For purposes of this discussion, however, it is not relevant whether or not an RLEC retains its rural exemption, because the rural exemption pertains to the duties of incumbent LECs under Section 251(c) of the Act, and MCI requested services in all cases pursuant to Sections 251(a) and (b) of the Act, and not pursuant to Section 251(c).

⁶ See MCI’s Petition for Arbitration in SCPSC Docket No. 2005-67-C at p. 5 (wherein MCI proposes language that states in part that “[MCI] has not requested anything from ILEC pursuant to Section 251(c).”

⁷ See SCPSC Order No. 2005-233 in SCPSC Docket No. 2005-67-C. (This order may be found in the Appendix to Time Warner’s Petition at Tab 3.)

⁸ Action No. 2005-CP-40-4306, Circuit Court of South Carolina, 5th Judicial Circuit.

⁹ SCPSC Order No. 2005-544 in Docket No. 2005-67-C. (See Appendix to Time Warner Petition at Tab 8.)

¹⁰ See Exhibit B to MCI’s Petition for Arbitration in SCPSC Docket No. 2005-188-C, at p. 1 (containing undisputed language in the proposed interconnection agreement which provides “[MCI] has clarified that it is not seeking services under Section 251(c) of the Act.”)

intervene and the petition was denied,¹¹ and TWCIS appealed that decision to state circuit court, where the appeal is pending.¹² The SCPSC conducted an arbitration proceeding, and the SCPSC issued its Order Ruling on Arbitration in the matter on January 11, 2006.¹³ The SCPSC's resolution of the issues raised by MCI in the Horry Telephone Cooperative arbitration was consistent with its ruling in the earlier arbitration.¹⁴

In the Arbitration Orders, the SCPSC determined, among other things, that under Sections 251(a) and (b) of the Act, an RLEC may appropriately limit the scope of its agreement with a competitive local exchange carrier ("CLEC") so that it applies only between the RLEC and the CLEC and relates only to the exchange of their respective end user customers' traffic.¹⁵ MCI petitioned for reconsideration of the SCPSC's Arbitration Orders and, more specifically, the SCPSC's determination of this issue.¹⁶

On March 1, 2006, Time Warner brought this action for a sweeping declaratory ruling that CLECs are entitled to interconnection with ILECs for the purpose of transmitting traffic to or from another (third party) service provider, such as a VoIP-based service provider. Time Warner's Petition for Declaratory Ruling should be denied. Time Warner is not seeking a declaration of existing law but seeks to have the Commission establish new law and policy. The

¹¹ SCPSC Order No. 2005-383 in Docket No. 2005-188-C.

¹² Case No. 2005-CP-40-4884, Circuit Court of South Carolina, 5th Judicial Circuit.

¹³ SCPSC Order No. 2006-2 in Docket No. 2005-188-C. (See Appendix to Time Warner Petition at Tab 11.)

¹⁴ For purposes of simplification, the term "RLECs" in these Comments will include Horry Telephone Cooperative, Inc., and the SCPSC's orders in the two arbitrations will be referred to separately as the "RLEC Arbitration Order" and the "Horry Arbitration Order," and collectively as the "Arbitration Orders."

¹⁵ See SCPSC Order No. 2005-544 at pp. 7-14, SCPSC Order No. 2006-2 at pp. 6-15.

¹⁶ See MCI Petitions for Reconsideration of Order Nos. 2005-544 and 2006-2 in SCPSC Docket Nos. 2005-67-C and 2005-188-C. It is expected that MCI will appeal the SCPSC's Arbitration

state commissions at issue correctly applied existing law and Commission regulations to limit the exchange of traffic under Section 251(b) of the Act to traffic originated on the respective networks of the parties to the agreement. Time Warner has not been foreclosed from providing competitive services in South Carolina. Furthermore, to the extent Time Warner complains of being limited with respect to the manner in which it may provide competitive services in rural areas of South Carolina or other states, it is within the respective state commissions' purview to make such public interest determinations.

DISCUSSION

I. The SCPSC Correctly Made a Distinction Between the Duty to Interconnect Under Section 251(a) and the Duty to Exchange Traffic Under Section 251(b), and Properly Found That the Act Does Not Require the RLECs to Transport and Terminate Third Party Traffic.

Granting a Petition for Declaratory Ruling is appropriate if needed to terminate a controversy or remove uncertainty.¹⁷ In this case, there is no such uncertainty or controversy upon which the Commission can rule. Time Warner does not seek a declaration of its rights under existing law, but seeks to have the Commission establish new law and policy. The appropriate forum for the Commission to make such determinations is not in the context of a declaratory ruling, but within the framework of the rulemaking proceedings that are currently before the Commission.¹⁸ In those proceedings, the Commission has solicited comments from

Orders; however, as of the time these comments are being prepared, the time has not yet run for appeal.

¹⁷ 47 C.F.R. § 1.2.

¹⁸ See, e.g., *See IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863 (2004); *Petition of Grande Communications Inc. For Declaratory Ruling Regarding Intercarrier Compensation For IP-Originated Calls*, WC Docket No. 05-283; *SBC*

all interested persons in the industry, is developing a full record, and is undertaking a detailed deliberative process to address all inter-related issues prior to establishing policies.

In the instant case, the SCPSC correctly found that the Act and existing Commission rules and decisions make a distinction between the duty to interconnect and the duty to exchange traffic, and properly found that the RLECs are not obligated under the Act and Commission regulations to transport and terminate third party traffic. The duty to exchange traffic under Section 251(b) was appropriately limited to the exchange of traffic originated on the networks of the respective parties – i.e., not third party traffic.

The SCPSC properly rejected MCI's argument that Section 251(a) of the Act requires the RLECs to transport and terminate third-party traffic. 47 U.S.C. § 251(a) requires that:

Each telecommunications carrier has the duty---

- (1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.

The duty to interconnect under Section 251(a) of the Act relates to "the physical linking of two networks for the mutual exchange of traffic."¹⁹ It does *not* require a carrier to transport and terminate another carrier's traffic.²⁰ Transport and termination obligations extend from

and Vartec Petition for Declaratory Ruling Regarding the Application of Access charges to IP-Transported Calls, WC Docket No. 05-276.

¹⁹ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 (1996), *aff'd in part and vacated in part sub nom. Competitive Telecommunications Ass'n v. FCC*, 117 F.3d 1068 (8th Cir. 1997) and *Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *aff'd in part and remanded*, *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 119 S. Ct. 721, 142 L. Ed. 2d 835 (1999); Order on Reconsideration, 11 FCC Rcd 13042 (1996), Second Order on Reconsideration, 11 FCC Rcd 19738 (1996), Third Order on Reconsideration and Further Notice of Proposed Rulemaking, FCC 97-295 (rel. Aug. 18, 1997) ("*Local Competition Order*") at ¶ 11.

²⁰ See *Total Telecommunications Services, Inc., and Atlas Telephone Company, Inc. v. AT&T Corporation*, File No. E-97-003, FCC 01-84, Memorandum Opinion and Order (rel. Mar. 13,

Section 251(b) of the Act and apply only directly between local exchange carriers.²¹ The Commission has previously stated that “reciprocal compensation for transport and termination of calls is intended for a situation in which *two carriers collaborate to complete a local call.*”²²

The Commission went on to define transport, for purposes of Section 251(b)(5) of the Act, as:

the transmission of terminating traffic that is subject to section 251(b)(5) from the interconnection point between the two carriers to the terminating end carrier’s end office switch *that directly serves the called party (or equivalent facility provided by a non-incumbent carrier).*²³

Transport is defined in the Commission’s regulations as:

the transmission and any necessary tandem switching of telecommunications traffic subject to section 251(b)(5) of the Act from the interconnection point between the two carriers *to the terminating carrier’s end office switch that directly serves the called party, or equivalent facility provided by a carrier other than an incumbent LEC.*²⁴

Likewise, termination is defined as:

the switching of telecommunications traffic *at the terminating carrier’s end office switch, or equivalent facility, and delivery of such traffic to the called party’s premises.*²⁵

Furthermore, the Commission’s regulation on reciprocal compensation specifically refers to the direct relationship of the carrier to the end-user customers in the exchange of traffic, providing as follows:

For purposes of this subpart, a reciprocal compensation arrangement *between two carriers* is one in which *each of the two carriers* receives compensation *from the other carrier* for the transport and termination *on each carrier’s network facilities*

2001), at ¶ 23 (“In the *Local Competition Order*, we specifically drew a distinction between ‘interconnection’ and ‘transport and termination,’ and concluded that the term ‘interconnection,’ as used in section 251(c)(2), does not include the duty to transport and terminate traffic.”).

²¹ See Section 251(b)(5).

²² *Local Competition Order*, CC Docket 96-98, FCC 96-325 at ¶ 1034. (Emphasis added.)

²³ *Id.* at ¶ 1039 (emphasis added).

²⁴ 47 C.F.R. § 51.701(c) (emphasis added).

²⁵ 47 C.F.R. § 51.701(d) (emphasis added).

*of telecommunications traffic that originates on the network facilities of the other carrier.*²⁶

Nothing in the Act supports Time Warner's contention that it is entitled to exchange VoIP traffic indirectly with the RLECs through MCI. The Commission's rules implementing interconnection uniformly address interconnection as a bilateral agreement between two carriers, each serving end-user customers within the same local calling area. Section 251(b) describes duties for each "local exchange carrier" with respect to other "local exchange carriers." The Commission's *Local Competition Order* discusses the exchange of traffic for local interconnection purposes in which two carriers collaborate "to complete a local call."²⁷

Interconnection under Section 251(a) is available only to telecommunications carriers.²⁸ Likewise, the obligations imposed by Section 251(b), including the duty to transport and terminate traffic, relate to parallel obligations between two competing telecommunications carriers serving within a common local calling area. Whether VoIP will be classified as a telecommunications service or information service is currently an open question before the Commission.²⁹ Unless and until the Commission does classify VoIP as a telecommunications

²⁶ 47 CFR § 51.701(e) (emphasis added).

²⁷ See *Local Competition Order*, CC Docket 96-98, FCC 96-325 at ¶ 1034.

²⁸ See Section 251(a)(1) of the Act ("Each telecommunications carrier has the duty . . . to interconnect . . . with the facilities and equipment of *other telecommunications carriers* . . .") (emphasis added).

²⁹ See Notice of Proposed Rulemaking, *IP-Enabled Services*, 19 FCC Rcd 4863 (2004); *Vonage Holdings Corp., Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, FCC 04-267, Memorandum Opinion and Order (rel. Nov. 12, 2004), ("Vonage Order"), fn 46 ("We do not determine the statutory classification of Digital Voice under the Communications Act, and thus do not decide here the appropriate federal regulations, if any, that will govern this service in the future. . . . These issues are currently the subject of our *IP-Enabled Service Proceeding* where the Commission is comprehensively examining numerous types of IP-enabled services. . . . That proceeding will resolve important regulatory matters with respect to IP-enabled services generally, . . . concerning issues such as the Universal Service Fund, intercarrier compensation, 911/E911,

service, VoIP providers do not have rights or obligations under Section 251. Thus, where MCI intends to act as an intermediary for a facilities-based VoIP service provider such as Time Warner, the VoIP provider could take the position that it is currently not required (and may never be required) to provide dialing parity or local number portability. If the Commission were to rule that telecommunications carriers have obligations to VoIP providers under Section 251 of the Act, while staying silent on the nature of VoIP service as a telecommunications or non-telecommunications service, the duties of the LEC and the VoIP service provider would not be parallel. This type of a non-parallel relationship was not contemplated or provided for under the Act, and would lead to inequitable results that are contrary to the public interest. For example, under such a scenario, a customer would be entitled to port a number from the LEC to the VoIP provider, but would not be entitled to port it back to the LEC if he so chose.

The SCPSC properly limited the scope of the interconnection agreements between the respective RLECs and MCI to the exchange of traffic directly generated by RLEC and MCI end-user customers (i.e., traffic originated on the respective carriers' network facilities). The SCPSC's decision is in keeping with the language and intent of the Act, as well as Commission rules and orders.

While it was not the primary basis of the SCPSC's ruling, the SCPSC also noted that, to the extent MCI seeks to provide service under contract to TWCIS, or indirectly to TWCIS' end-user customers, such service does not meet the definition of "telecommunications service" under the Act and, therefore, MCI is not a "telecommunications carrier" with respect to those end user

consumer protection, disability access requirements, and the extent to which states have a role in such matters").

services.³⁰ This reasoning is consistent with the United States Court of Appeals for the District of Columbia Circuit's interpretation of the Act.³¹ Time Warner comments in its Petition³² that it is a telecommunications provider in a manner similar to that of provider of DSL service, which has a telecommunications component. This situation is not analogous to a VoIP provider requesting interconnection for the exchange of traffic. The FCC's *Wireline Broadband Order*³³ allows DSL transport to be offered either on a common carrier basis or under Title I on a non-common carrier basis. The *Wireline Broadband Order* does not extend the telecommunications definition to any of the traffic that is generated on the DSL service. The provision of transport for VoIP services does not transform the traffic into telecommunications traffic nor a carrier into a telecommunications carrier.

Time Warner's confusion with respect to the different duties contained in different sections of the Act is evident at page 12 of its Petition when Time Warner attempts to bootstrap the duties of Section 251(c) into Section 251(a).³⁴ The duties clearly differ, and the obligations run to different groups of telecommunications carriers. Furthermore, the obligations of Section 251(c) do not even apply in the South Carolina situation, because three of the five RLECs are

³⁰ See Section 153(46) of the Act ("Telecommunications service" means "the offering of telecommunications for a fee *directly to the public*, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.")

³¹ See *Virgin Islands Telephone Corp. v. FCC*, 198 F.3d 921 (D.C. Cir. 1999) (wherein the Court held that, when a carrier is not offering service "directly to the public, or to such classes of users to be effectively available directly to the public," that carrier is not a telecommunications carrier providing telecommunications service under the Act with respect to that service.

³² Petition at p. 20.

³³ *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, et al.*, Report and Order and Notice of Proposed Rulemaking, CC Docket No. 02-33 et al., FCC 05-150 (rel. Sept. 23, 2005 ("Wireline Broadband Order").

³⁴ Time Warner cites Section 251(c)(2) for the proposition that incumbent LECs have "the duty to provide, for the facilities and equipment of any requesting telecommunications carrier,

currently exempt from those obligations and, in any event, MCI sought only interconnection from each of the RLECs under Section 251(a) and the exchange of traffic under Section 251(b).³⁵

Throughout its Petition, Time Warner characterizes its arrangement with MCI as one in which MCI will provide “wholesale” services to Time Warner. In fact, it is clear that MCI does not intend to provide wholesale services in the traditional sense pursuant to the Act, i.e., for resale by Time Warner pursuant to Sections 251(b)(1) or (c)(4). In a traditional resale situation, a facilities-based carrier provides the underlying service that another carrier markets for resale to the end user customer. In the MCI/Time Warner situation, MCI is not a facilities-based local exchange carrier, nor is Time Warner a reseller. MCI merely proposed to act as an intermediary – a “connection” – between two facilities-based carriers -- the RLEC and Time Warner. There is no reason why Time Warner cannot seek to establish its own interconnection if it is, in fact, entitled to do so. If it is not so entitled, then it should not be permitted to do indirectly what it would not be allowed to do directly. These issues should be fully addressed in the context of a clear request for the direct exchange of traffic.

Time Warner also takes issue with the SCPSC’s decision not to allow indirect local number portability through an intermediary CLEC to a third-party VoIP provider such as TWCIS. Clearly the Commission’s decision not to allow one-way porting, where the ultimate carrier obtaining the number does not have an obligation to port it back should the customer wish to do so, is consistent with the Act, Commission regulations, and the public interest. Again,

interconnection with the local exchange carrier’s network . . . for the transmission and routing of telephone exchange service and exchange access.” Petition at p. 12.

³⁵ In fact, each of the RLECs has subsequently entered into an interconnection agreement with MCI which specifically provides that MCI “has made a request for services under Sections 251(a) and (b) of the [Act] and has clarified that it is not seeking services under Section 251(c) of

obligations under Section 251(b) of the Act, including the duty to provide number portability, run to telecommunications carriers only, and VoIP service is currently not classified as a telecommunications service. Additionally, only service provider portability is required. Service provider portability is defined as:

The ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching *from one telecommunications carrier to another*.³⁶

Absent parallel obligations between two telecommunications carriers, the RLECs are not required to port numbers, and porting is not in the public interest.

II. Time Warner Is Not “Foreclosed” From Providing Competitive Services by the State Commissions’ Decisions.

Time Warner erroneously argues the SCPSC’s Arbitration Orders and similar decisions have the effect of “foreclosing” Time Warner from providing its Digital Phone service in certain areas.³⁷ In fact, Time Warner currently provides its Digital Phone service in many areas of South Carolina, and may seek its own arrangements to exchange traffic with the RLECs, if it is entitled to do so. If it is not entitled to exchange traffic directly with the RLECs, it should not be permitted to do indirectly what it would not be entitled to do directly.

There is simply not the urgency that Time Warner claims in order to justify the relief it seeks. Traffic is being completed between SCTC company customers and TWCIS customers. In its initial certification proceeding in SCPSC Docket No. 2003-362-C, the SCTC and TWCIS

the Act.” See Interconnection Agreements between MCI and the respective RLECs, on file with the SCPSC, General Terms & Conditions, p. 1.

³⁶ 47 C.F.R. § 52.21(q).

³⁷ Petition at p. 2.

entered into a stipulation on the record that would allow traffic to be exchanged.³⁸ In fact, the only real issues left open in the stipulation relate to TWCIS' provision of competitive local exchange service in areas served by rural telephone companies – issues expressly reserved under the Act for decision by the state commissions.

The SCPSC's MCI Arbitration Orders apply only to limited areas of South Carolina served by certain rural companies. If Time Warner is not currently offering Digital Phone service in all areas of South Carolina, it is not because of the SCPSC's actions. For some time, Time Warner pursued a business plan by which it would exchange traffic indirectly with the RLECs through MCI, over the objections of the RLECs and despite the fact that MCI would not agree to RLEC-proposed provisions that would ensure the appropriate identification of third party traffic.³⁹ The SCPSC reasonably refused to allow such an indirect exchange of traffic, in accordance with the Act and Commission regulations. Time Warner is free to seek direct interconnection agreements with the RLECs and has, in fact, done so. The RLECs have appropriately raised concerns regarding the nature of Time Warner's Digital Phone service (i.e., whether or not it constitutes a telecommunications service) and whether or not the RLECs are obligated to enter into negotiations with Time Warner for interconnection and the exchange of traffic under Section 251 of the Act with respect to such traffic. Once those threshold issues are resolved, there are still public interest determinations to be made before competitive local

³⁸ See Transcript of Hearing in SCPSC Docket No. 2003-362-C.

³⁹ Specifically, MCI took the position that it should only be required to "pass along as received" the signaling information provided to it by third parties, with no responsibility for the accuracy of such information. Additionally, MCI took issue with the RLECs' insistence that the parties agree to provide "Jurisdictional Indicator Parameter" or "JIP" with the signaling information in order to allow the RLECs to accurately determine the jurisdiction of calls, and more particularly VoIP calls, and to rate them accordingly.

exchange service can be offered in rural areas of the state, and Congress has clearly stated that those public interest determinations are to be made by the state commissions.⁴⁰

III. State and Federal Policy Weigh Against Granting Time Warner's Petition for Declaratory Ruling

As with the related Preemption Petition,⁴¹ by seeking a declaratory ruling in this docket, Time Warner is seeking to bypass the normal deliberative process associated with a number of complex and inter-related issues, and to make an "end run" around important federal and state proceedings and powers. If Time Warner's request for declaratory ruling is granted, it would have the effect of pre-determining the nature of Time Warner's Digital Phone VoIP service, at least to the extent of determining other parties' obligations regarding how to treat such traffic. This issue is only one of several inter-related issues currently before the Commission in its *IP-Enabled Services Proceeding*,⁴² and the issue should not be determined piece-meal.

More importantly, granting Time Warner's petition would circumvent federal and state law provisions that provide for important public interest determinations to be made by the states prior to permitting competitive local service in rural areas. As discussed in the SCTC's Comments in the related proceeding involving Time Warner's Preemption Petition,⁴³ the SCPSC did not reach these issues in the Time Warner certification proceeding. Likewise, in the MCI Arbitrations, the SCPSC did not reach the issue of whether the provision of local service in rural areas by Time Warner would be contrary to the public interest, because the SCPSC determined it

⁴⁰ See, e.g., 47 U.S.C. §§ 251(f)(1); 253(f).

⁴¹ Preemption Petition, WC Docket No. 06-54.

⁴² See *IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863 (2004).

⁴³ Preemption Petition, WC Docket No. 06-54.

was not appropriate for Time Warner to serve those areas indirectly using MCI as a conduit. If the Commission were to require the RLECs to exchange Time Warner's traffic through MCI, it would take away the states' rights and authority to make appropriate public interest determinations regarding the provision of competitive service in rural areas under state certification statutes as well as under Sections 251(f) and 253(f) of the Act.⁴⁴

Furthermore, granting Time Warner's request would not only circumvent state and federal laws regarding rural areas and the Commission's open proceeding on IP-enabled services, but would also exacerbate concerns with phantom traffic and transit traffic issues, as well as bypass the deliberative process the Commission is currently undertaking with respect to the issues raised in other Declaratory Ruling petitions before the Commission, including the *Grande*⁴⁵ and *Vartec*⁴⁶ petitions concerning the delivery of IP traffic via an intermediate carrier.

IV. Time Warner Has Adequate Remedies in Current State and Federal Proceedings.

As noted above, Time Warner's request for declaratory ruling is not appropriate under the circumstances presented here. In addition, it should be noted that Time Warner has available to

⁴⁴ Time Warner erroneously states that the decision to seek interconnection under Section 251(a) rather than 251(c) eliminates the RLECs' concerns about potential undercompensation as a result of TELRIC pricing and that the RLECs' refusal to interconnect is, therefore "the epitome of anticompetitive conduct." Petition at p. 22. To the contrary, TELRIC pricing is not the only concern that justifies the rural exemption under Section 251(c) of the Act. There are also very important universal service concerns underlying the rural exemption and Time Warner cannot merely gloss over those issues by seeking interconnection under 251(a) and pretending they do not exist.

⁴⁵ *Petition of Grande Communications Inc. For Declaratory Ruling Regarding Inter-carrier Compensation For IP-Originated Calls*, WC Docket No. 05-283.

⁴⁶ *SBC and Vartec Petition for Declaratory Ruling Regarding the Application of Access charges to IP-Transported Calls*, WC Docket No. 05-276.

it other avenues and forums in which to present its positions and to argue for new policy with respect to its services.

TWCIS has appealed the SCPSC's denial of its Petitions to Intervene in SCPSC Docket Nos. 2005-67-C and 2005-188-C to state circuit court under the South Carolina Administrative Procedures Act.⁴⁷ Those appeals are pending.⁴⁸ Likewise, MCI has petitioned for reconsideration, as a prerequisite to appeal, of the SCPSC's Arbitration Orders on their merits, asserting in part the same argument upon which Time Warner requests a Declaratory Ruling from the Commission. In addition, TWCIS has sought direct interconnection with certain RLECs, and has brought individual complaints before the SCPSC alleging that five (5) RLECs have failed to negotiate in good faith with TWCIS on interconnection agreements.⁴⁹

In addition to the various ongoing state proceedings, as noted in Section III above, there are several ongoing federal proceedings that are addressing the same types of issues upon which Time Warner seeks this declaratory ruling. Those proceedings are a more appropriate forum in which to address all of the implications of the issues raised here.

CONCLUSION

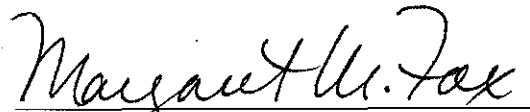
Time Warner's Petition for Declaratory Ruling should be denied. The issue raised is not ripe for declaratory ruling and, in fact, by seeking this declaratory ruling Time Warner seeks to have the Commission bypass the normal deliberative process and establish new law and policy. The state commissions at issue correctly applied existing law and Commission regulations, and

⁴⁷ S.C. Code Ann. § 1-23-10 et seq.

⁴⁸ Action Nos. 2005-CP-40-4306 and 2005-CP-40-4884 before the Circuit Court of South Carolina, 5th Judicial Circuit.

appropriately limited the exchange of traffic under Section 251(b) of the Act to traffic originated on the respective networks of the parties to the agreement. Time Warner has not been foreclosed from providing competitive services in those states. Furthermore, to the extent Time Warner complains of being limited with respect to the manner in which it may provide competitive services in rural areas of South Carolina or other states, it is within the respective state commissions' purview to make such public interest determinations.

Respectfully Submitted,



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Coalition

April 10, 2006

Columbia, South Carolina

⁴⁹ See SCPSC Docket Nos. 2005-402-C, 2005-403-C, 2005-404-C, 2005-405-C, and 2005-406-C, which have been consolidated and set for hearing on June 27-29, 2006 before the SCPSC.

Before the
FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of)
)
Time Warner Cable's Petition For)
Declaratory Ruling That Competitive)
Local Exchange Carriers May)
Obtain Interconnection To Provide)
Wholesale Telecommunications Services)
To VoIP Providers)

WC Docket No. 06-55

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments of the South Carolina Telephone Coalition was served this 10th day of April, 2006, by e-mailing true and correct copies thereof to the following persons:

Janice Myles
Competition Policy Division
Wireline Competition Bureau
Federal Communications Commission
janice.myles@fcc.gov

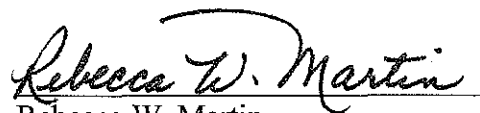
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Wireline Competition Bureau
Federal Communications Commission
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I hereby certify that a copy of the foregoing Comments of the South Carolina Telephone Coalition was served this 10th day of April, 2006, by mailing true and correct copies thereof, postage prepaid, to the following persons:

Marc J. Lawrence-Apfelbaum
Executive Vice President, General Counsel & Secretary
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A handwritten signature in cursive script, reading "Rebecca W. Martin", written over a horizontal line.

Rebecca W. Martin
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EXHIBIT A

EXHIBIT A

South Carolina Telephone Coalition Member Companies

Bluffton Telephone Company, Inc.
Chesnee Telephone Company
Chester Telephone Company
Farmers Telephone Cooperative, Inc.
Ft. Mill Telephone Company, d/b/a Comporium Communications
Hargray Telephone Company, Inc.
Home Telephone Company, Inc.
Horry Telephone Cooperative, Inc.
Lancaster Telephone Company, d/b/a Comporium Communications
Lockhart Telephone Company
McClellanville Telephone Company
Norway Telephone Company
Palmetto Rural Telephone Cooperative, Inc.
Piedmont Rural Telephone Cooperative, Inc.
PBT Telecom
Ridgeway Telephone Company
Rock Hill Telephone Company, d/b/a Comporium Communications
Sandhill Telephone Cooperative, Inc.
St. Stephen Telephone Company
West Carolina Rural Telephone Cooperative, Inc.
Williston Telephone Company